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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BONNIE JO ALEXANDER,

Defendant and Appellant.

D042798

(Super. Ct. No. SCS175588)

APPEAL from a judgment of the Superior Court of San Diego County, Esteban Hernandez, Judge. Affirmed as modified.

Bonnie Jo Alexander entered a negotiated guilty plea to withholding a stolen motor vehicle within the meaning of Vehicle Code section 415, in violation of Penal Code section 496d. The court suspended imposition of sentence and placed her on three years' probation, including conditions that she serve 240 days in custody and pay a restitution fine in the amount of \$400. At a restitution hearing, the court ordered

Alexander to pay \$5,000 restitution to the victim. Alexander contends the trial court erred in ordering her to pay this restitution.

FACTS

On April 3, 2003, Michael Silverman's car was stolen. According to Silverman, he had personal property valued at \$7,925.43 in the car at the time it was stolen. On April 14, police found the car parked at the Days Inn Hotel in National City. Police watched the car for three hours but did not observe anyone approach it. Police then contacted Silverman to let him know they had located his car. Silverman came to the Days Inn Hotel. He let the air out of the tires and continued to watch the car. A few minutes later, he saw Alexander open the car door, close it, and return to the hotel. Silverman called the police. While Silverman was on the telephone with police, Alexander came out of the hotel room and yelled, "Hey, what did you do to the tires on the Mercedes!" She came down to the car and said, "The car belongs to a friend of mine and I'm going to get him." Silverman was holding a knife. Alexander walked away. Silverman told her to stop, said that the car was his, and informed her that the police were on their way. Alexander fled through the hotel lobby, out another door, and jumped a fence. The police found her hiding in a woodpile.

When questioned, Alexander told police that a friend whom she had met three days earlier at the beach had driven the car to the hotel to meet a guy to discuss cellular telephones. Alexander said she waited for her friend for about 15 minutes in the car and for another 30 minutes outside the car. She said she jumped the fence and hid because

she was afraid of the man with the knife. She said she heard police but continued to hide because she thought it was a dangerous situation.

DISCUSSION

Alexander argues that the order that she pay Silverman restitution constitutes error. Specifically, Alexander contends that there is insufficient evidence to support a finding that her conduct caused Silverman any financial loss.

At the sentencing hearing, while placing Alexander on probation, the trial court included as a condition of probation that Alexander pay a \$400 restitution fine. However, the court did not make restitution to Silverman a condition of probation. The court's subsequent order that Alexander pay \$5,000 restitution to Silverman was thus entered pursuant to Penal Code section 1202.4.

Penal Code section 1202.4 provides in pertinent part:

"(a)(1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime. [¶] . . . [¶]

"(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order"

The question before this court is whether substantial evidence supports the restitution order. We affirm a judgment that is supported by substantial evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) Substantial evidence is evidence of legal significance, reasonable in nature, credible and of solid value. (*People v. Samuel* (1981) 29 Cal.3d 489, 505.) The court must review the entire record most favorably to the

judgment below and presume in support of the judgment the existence of every fact the fact finder could reasonably deduce from the evidence.

The victim claimed losses totaling \$8,964.20, which included the following items: \$1,835.03 for a CPAP Assisted Breathing Machine; \$1,200 for cameras and camera equipment; \$375.99 for a car radio; \$343.74 for a CD changer; \$161.21 for hand tools; \$107.42 for a saw; \$107.42 for a blood pressure machine; \$80.63 for medical equipment and supplies; \$107.42 for an air compressor; \$343.74 for a printer; \$96.74 for a fax machine; \$51.60 for business cards; \$75.85 for a car jack; \$105.35 for car mats; \$66.65 for a tire; \$49.90 for gasoline containers; \$40 for an electric razor; \$272 for eight Entertainment coupon books; \$289.90 for a flag; \$16.11 for blank CD's; \$25 for World Series pins; \$30 for MIA/POW hat; \$134.38 for a warm-up jacket; \$200 for baseball tickets; \$73 for towing charges; \$189.26 for a replacement key; \$1,548 for unspecified physical damage to the car; \$19.87 to repair the glove compartment; and \$379.26 to repair the lumbar seat. The court ordered that Alexander pay Silverman restitution in the amount of \$5,000.

In order to require that a defendant make restitution to a victim under Penal Code section 1202.4, subdivision (f), the victim's economic loss must be the result of the defendant's conduct. Silverman's car was stolen on April 3, 2003 -- 11 days before Alexander's arrest. The factual basis for Alexander's guilty plea was that she "unlawfully aided in the withholding of the motor vehicle of another which had been stolen." There is no evidence regarding who may have had possession of the car between April 3, 2003, the day it was stolen, and April 14, the day it was recovered. Further, there is no

evidence that Alexander had anything to do with stealing the car, that she caused any damage to the car, or that she ever had possession of the personal items reportedly missing from the car.

Under these circumstances, there is insufficient evidence to support the restitution order insofar as it requires that Alexander pay restitution to compensate Silverman for damage to the car for loss of personal property. However, the evidence is sufficient to support that portion of the order requiring Alexander to pay restitution for the towing charges of \$73 and \$189.26 for a replacement key, for a total of \$262.26.¹

DISPOSITION

The conviction is affirmed. The restitution order is modified to order Alexander to pay \$262.26.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.

¹ Silverman may apply to the state Victims' Restitution Fund for his losses. (See Gov. Code, § 13959 et seq.)